

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID FLYNN,
Plaintiff

v.

MICHAEL J. WELCH, JIM FORREST, and
STEPHEN TRAISTER,
Defendants

Civil Action No. 1:21-cv-10256-IT

**SUPPLEMENTAL AFFIDAVIT OF BRIAN E. LEWIS, ESQ. IN SUPPORT OF
DEFENDANTS' SUMMARY JUDGMENT REPLY MEMORANDUM OF LAW**

BRIAN E. LEWIS, ESQ., on oath, depose and says as follows:

1. I am a principal at the law firm Jackson Lewis P.C. and represent Defendants Michael J. Welch, Jim Forrest, and Stephen Traister in this matter.

2. This Supplemental Affidavit is submitted in support of Defendant's Reply Memorandum of Law.

3. On November 9, 2021, I attended the deposition of Defendant Michael J. Welch. True and accurate copies of excerpts from the transcript of the deposition of Michael J. Welch are attached as Exhibit D.

4. On May 17, 2021, Defendants served their Initial Disclosures. A true and accurate copy of the relevant portion of Defendant's Initial Disclosures is attached as Exhibit E.

5. On September 20, 2021, I attended the deposition of Defendant Jim Forrest. True and accurate copies of excerpts from the transcript of the deposition of Jim Forrest are attached as Exhibit F.

6. On September 20, 2021, I attended the deposition of Defendant Stephen Traister. True and accurate copies of excerpts from the transcript of the deposition of Stephen Traister are attached as Exhibit G.

Signed under the pains and penalties of perjury this 4th day of March 2022.

/s/ Brian E. Lewis
Brian E. Lewis

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on March 4, 2022.

/s/ Brian E. Lewis
Jackson Lewis, P.C.

EXHIBIT D



Planet Depos®
We Make It *Happen*™

Transcript of Michael Welch

Date: November 9, 2021

Case: Flynn -v- Welch, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

Transcript of Michael Welch
Conducted on November 9, 2021

49

1 Q Okay. Why?

2 A There were many aspects of the email that
3 were completely opposed to the work that we were
4 doing as a district. And Mr. Flynn characterized
5 me in ways that were in my mind astonishing.

6 Q Okay. You said there were some aspects of
7 it that were completely opposed to what you were
8 doing as a district.

9 Could you elaborate on that? What do you
10 mean by that?

11 A We have had a district school committee
12 goal around equity, meaning everyone gets what
13 they need to succeed. And in prior emails
14 Mr. Flynn had indicated that equity, diversity,
15 and inclusion were things he believed in. And
16 then in this email I believe Mr. Flynn denounced
17 the concept of equity. And he was very upset that
18 we had hired a diversity, equity, and inclusion
19 officer. And indicated that he did not believe we
20 needed to diversify our teaching force. And that
21 -- I think there were many instances where he
22 characterized me in what I would consider
23 derogatory terms, specifically the word canary.

24 Q What do you think canary is or why is

Transcript of Michael Welch
Conducted on November 9, 2021

50

1 canary a derogatory term?

2 A Well, I didn't perceive it as a
3 compliment. And the whole concept of a canary is
4 someone -- as a bird used in mines that would
5 often be the first signal of the presence of a
6 poisonous gas and someone that would portend
7 doom -- not someone, an animal that was used to
8 kind of be a barometer of future disaster.

9 Q Do you recall any other characterizations
10 in the email that troubled you about yourself?

11 A I recall him using the word weak, the
12 wrong person for the job. The overall impression
13 that I had was Mr. Flynn was very unhappy with me
14 and my leadership and where the district was
15 headed.

16 Q After reading the email what did you --
17 did you take any action?

18 A Well, I spoke with the middle school
19 principal, I spoke with my school committee chair
20 and vice chair, I spoke with the principal, I
21 spoke with the athletic director. Over the course
22 of time I had many conversations with many
23 different people about it.

24 Q Okay. Who did you have conversations with

Transcript of Michael Welch
Conducted on November 9, 2021

63

1 And I was also having conversations with
2 the high school principal. And he was in a
3 sequence in his life that was very difficult due
4 to some outside issues that were going on. And
5 over time those different conversations with the
6 attorney led me to believe that we were within our
7 rights to not rehire Mr. Flynn moving forward.

8 Q When did you make that decision?

9 A We were also trying to get a sense of
10 whether or not the season was going to even
11 happen. The season had already been canceled for
12 the fall. There were discussions about whether or
13 not the season would occur during the spring, and
14 ultimately it became clear that it was going to
15 happen. That was just before the holidays, just
16 before Christmas. And I believe around the
17 Christmas break having some time to consider it, I
18 believed it was best to move forward not
19 reappointing Mr. Flynn.

20 Q Okay. Before we get to Christmas break in
21 January, did you have -- approximately how many
22 conversations did you have with Mr. Forrest in
23 October, November, and December about Mr. Flynn?

24 A I would say three to four.

Transcript of Michael Welch
Conducted on November 9, 2021

64

1 Q Okay. And what were those conversations
2 about?

3 A It was about the content of the email, the
4 -- whether or not this was someone that we could
5 continue to support as an employee of the district
6 and whether or not he was the appropriate person
7 to continue leading the program.

8 Q And what -- did Mr. Forrest express his
9 views on those topics with you during these three
10 to four conversations?

11 A Yes, he agreed this was an outrageous move
12 by a varsity coach in the district, and he was
13 very troubled by it.

14 Q Did he inform you why he was outraged and
15 troubled by it?

16 A I think for the same reasons, the attacks
17 on me as the leader of the district, the attacks
18 on the direction of the district as a whole, and
19 the values that are important to us.

20 Q What about Mr. Traister, how many
21 conversations did you have with him in November,
22 October, December about Mr. Flynn?

23 A I'd say approximately the same, three to
24 four.

Transcript of Michael Welch
Conducted on November 9, 2021

65

1 Q Okay. And what were those conversations
2 about?

3 A Very similar, getting his perspective on
4 the sequence and really the final email that came
5 out. It was less about what had occurred prior to
6 that and really about that, the content there is
7 really similar to Mr. Forrest.

8 Q Okay.

9 MR. LEWIS: It's been about another hour,
10 I think Mr. Welch might be getting a little tired.
11 What are you thinking about timing and such?

12 MR. BEKESHA: Yeah. Why don't I finish up
13 a few more questions about this time period and
14 then it probably is a good time to -- and then we
15 can take a break, we can take a lunch break.

16 MR. LEWIS: That's fine. Are you okay,
17 Mike Welch?

18 THE WITNESS: Sure.

19 MR. BEKESHA: Just a few more minutes to
20 close the loop on the end of 2020.

21 MR. LEWIS: No problem.

22 MR. BEKESHA: I think I finally have
23 realized what years we're in, so that's a plus.

24 Q Did -- was there -- at some point did you

Transcript of Michael Welch
Conducted on November 9, 2021

98

1 A Yes.

2 Q Okay. Did you bring anything to the
3 meeting with you?

4 A Yes.

5 Q What did you bring to the meeting?

6 A I brought a copy of Mr. Flynn's email, I
7 believe the one from October 22nd, the one that
8 we've been looking at. I can't remember the
9 number of the exhibit, but I brought copies of
10 that email so that Mr. Flynn could review it and
11 to give him the opportunity to indicate whether or
12 not that was his, he did indicate that that was
13 his. We went next to a series of copies of school
14 committee goals for the last few years that all
15 talked about equity being a main goal of the
16 school committee.

17 And I asked Mr. Flynn if he continued to
18 believe that equity is a word used by socialists
19 and he does not believe in equity, and he
20 indicated he does not. And I think those were the
21 documents that I shared with him.

22 Q Do you recall if Mr. Flynn said he did not
23 believe in equity in all circumstances or in some
24 circumstances?

Transcript of Michael Welch
Conducted on November 9, 2021

119

1 Q Okay. Have you spoken to any players
2 about the decision about Mr. Flynn since
3 January 20th, 2021?

4 A No.

5 Q Have you spoken to any former players
6 about Mr. Flynn since January 20th, 2021?

7 A I have not spoken directly verbally with
8 former players. I did receive a handful of emails
9 from former players, some very supportive of the
10 decision to not reappoint him, some very upset
11 with the decision to not reappoint him.

12 Q Had Mr. Flynn not written that
13 October 22nd, 2021, email would he have been
14 reappointed as head football coach?

15 MR. LEWIS: Objection.

16 A Yes.

17 MR. BEKESHA: Did you want to lodge an
18 objection there, Brian?

19 MR. LEWIS: I did lodge an objection.
20 Thank you.

21 Q And what was your answer to the question,
22 Mr. Welch?

23 A Would Mr. Flynn have been reappointed as
24 the football coach for the spring 2021 season?

Transcript of Michael Welch
Conducted on November 9, 2021

120

1 The answer would be yes.

2 Q Okay. I just want to make sure that was
3 clear.

4 Do you know Jessica Porter?

5 A Yes.

6 Q Have you spoken to Ms. Porter about
7 Mr. Flynn?

8 A No.

9 Q Have you spoken to Ms. Porter about issues
10 generally related to Mr. Flynn?

11 A No.

12 Q Are you aware that Ms. Porter publicly
13 commented about the decision not to reappoint
14 Mr. Flynn?

15 A Yes.

16 Q Have you spoken to Ms. Porter about her
17 public comment?

18 A No.

19 MR. BEKESHA: Suzie, let's pull up
20 defendant Welch's answers to interrogatories.

21 (WELCH Deposition Exhibit 11 marked for
22 identification and attached to the transcript.)

23 Q Mr. Welch, do you recognize this document?

24 A Yes.

Transcript of Michael Welch
Conducted on November 9, 2021

121

1 Q And what is this document?

2 A It's my answers to the first set of
3 interrogatories that were issued to us as
4 defendants.

5 Q Okay. If we could turn to page 4,
6 interrogatory 6. The question is, identify all
7 reasons why the decision was made not to reappoint
8 plaintiff as Dedham High School football coach for
9 the 2020-2021 season. Your answer, the decision
10 not to reappoint plaintiff as football coach was
11 based on the statements made and positions taken
12 in the plaintiff's October 2020 emails sent to
13 members of the school committee.

14 Based on today's testimony, I just want to
15 clarify what you mean by plaintiff's October 2020
16 emails.

17 Do you mean the October 22nd email solely
18 or other emails as well?

19 A That would be just the October 22nd email.
20 The other emails, I believe they were October 7th
21 and October 14th. I don't believe those were sent
22 to the school committee. And those were not
23 factors in this decision.

24 Q Okay. Thank you. If we could just turn

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID FLYNN,
Plaintiff

v.

MICHAEL J. WELCH, JIM FORREST, and
STEPHEN TRAISTER,
Defendants

Civil Action No. 1:21-cv-10256-IT

DEFENDANTS' FED. R. CIV. P. 26(a)(1) INITIAL DISCLOSURES

Defendant Michael J. Welch, Jim Forrest, and Stephen Traister, by and through their undersigned counsel, hereby serve their Initial Disclosures, pursuant to Fed. R. Civ. P. 26(a)(1). The information contained herein and any documents identified, described, or produced are based only upon information presently available to Defendants and is given in a good faith effort to comply with Rule 26(a)(1).

I. Individuals Likely To Have Discoverable Information That Defendant May Use To Support Its Defenses.

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i), Defendants provide the following disclosures of individuals currently known to Defendants who are likely to have discoverable information, which Defendants may use to support its defenses in this case unless solely for impeachment:

1. Plaintiff
2. Ann Flynn
3. Michael Welch
c/o Jackson Lewis, P.C.
4. James Forrest

c/o Jackson Lewis, P.C.

5. Stephen Traister

c/o Jackson Lewis, P.C.

6. Lisa Laprade, Dedham School Committee member

c/o Jackson Lewis, P.C.

7. Tracey White, Dedham School Committee member

c/o Jackson Lewis, P.C.

8. Maryanne Briggs, Dedham School Committee member

c/o Jackson Lewis, P.C.

9. Steve Bilafer, Dedham School Committee member

c/o Jackson Lewis, P.C.

10. Kevin Bresnahan, Esq.

Murphy, Hesse, Toomey & Lehane LLP
Crown Colony Plaza
300 Crown Colony Drive, Suite 410
PO Box 9126
Quincy, MA 02169-9126

Defendant's investigation is continuing and it reserves the right to supplement this response as provided in Rule 26.

II. Documents That Defendants May Use To Support Its Defenses

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii), Defendants hereby identify the following documents or categories of documents that it may use to support their defenses in this case that are within its possession, custody, or control unless the use would be solely for impeachment. The identification of document categories herein does not waive any privilege, confidentiality or work product protection that may apply to certain documents.

EXHIBIT F



Planet Depos®
We Make It *Happen*™

Transcript of Jim Forrest

Date: September 20, 2021

Case: Flynn -v- Welch, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

Transcript of Jim Forrest
Conducted on September 20, 2021

84

1 THE WITNESS: Yes.

2 BY MR. BEKESHA:

3 Q Had Coach Flynn not written that
4 October 22nd email would he have been reappointed
5 for the fall -- would he have coached the Fall 2
6 season?

7 MR. LEWIS: Objection. You can answer.

8 THE WITNESS: More than likely, yes.

9 BY MR. BEKESHA:

10 Q What do you mean by -- is there -- do
11 you have any doubt in your mind that he would have
12 from your perspective been coach for the Fall 2
13 season had he not written the email?

14 A I guess I'm having a hard time
15 separating the fact that he did write the email.
16 He clearly spent a lot of time on the email, and I
17 can't say with a hundred percent confidence that
18 he would not have -- this seems to be -- this
19 obviously was a real issue with Coach Flynn, so
20 you're asking me to look into the future. I'm
21 looking into the future the best I can, and I
22 would say --

23 Q Sure. Besides the October 22nd email
24 were there any other reasons why Coach Flynn was

EXHIBIT G



Planet Depos®
We Make It *Happen*™

Transcript of Stephen Traister

Date: September 13, 2021

Case: Flynn -v- Welch, et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

Transcript of Stephen Traister
Conducted on September 13, 2021

67

1 Q Did -- at this meeting, did Mr. Forrest
2 speak at all?

3 A Yeah, we spoke, and it was more
4 conversationally. I don't remember -- I don't
5 remember who went in order after that. It was
6 more of a conversational meeting, but he -- he,
7 basically, agreed that we needed to have a meeting
8 and that this email was not good.

9 Q Okay. Did he -- did he express one way or
10 another if he thought Coach Flynn could -- could
11 coach the upcoming Fall II season?

12 A We all agreed that with the contents of
13 that email and that we needed to meet and that
14 would -- like, the email was not good and that we
15 needed to meet with Coach Flynn and discuss this
16 email and discuss where we were going forward.

17 Q During that meeting, did you make the
18 decision to not reappoint Coach Flynn for the Fall
19 II season?

20 A We, basically, said, yeah, it's not going
21 to -- like, I guess, in my mind, and I think -- we
22 didn't discuss this but, you know, we needed to

Transcript of Stephen Traister
Conducted on September 13, 2021

68

1 meet with Dave. You know, if Dave had said,
2 "Yeah, I made a mistake," or something, I don't
3 know, like, we didn't discuss that but that was in
4 my mind, but we needed to have a meeting and that
5 our meeting that day, we, basically, said, with
6 the contents of that email, Mr. Welch didn't think
7 he could come back, Mr. Forrest didn't think he
8 could come back, and I agreed -- with the contents
9 of that email and that we needed to have a -- a
10 meeting with Mr. Flynn.

11 I said, "Well, we need to have this quick
12 because the season starts, basically, a month from
13 now." And then Mr. Welch said, "I'll let my
14 secretary set up a meeting time."

15 Q Okay. Did you think -- after your
16 meeting -- after this meeting, did you think that
17 it was possible that Coach Flynn could coach the
18 upcoming season?

19 A From the -- from that meeting, I didn't.
20 I don't -- like, I thought we would have a meeting
21 with Dave to let Dave talk, you know, and if
22 Dave -- in my mind, if Dave was contrite or

Transcript of Stephen Traister
Conducted on September 13, 2021

69

1 whatever, there might be a chance, you know, like,
2 but going out of that meeting, I thought we were
3 going to have to make a change to the football
4 coach.

5 Q And in your mind, why did you think you
6 needed to make a change to the football coach?

7 A Because of the contents of that email.

8 Q What -- what specifically about -- about
9 the contents?

10 A Sure. So, Mr. Welch really talked about
11 how it was not in line with what the school
12 believed in. More on my end, it was the -- I mean
13 he didn't talk about it. I thought the way he
14 talked about our boss was bad, and Mr. Forrest
15 agreed with that, as well.

16 Q Okay. Were you concerned that Coach Flynn
17 couldn't be an effective coach on the field
18 because of the content of his email?

19 A Yeah, I was worried, you know, if this is
20 what he -- like, I just thought if he wrote that
21 about me, I would be -- I would have a problem.
22 I'm, like, his -- you know, the chain of command,

Transcript of Stephen Traister
Conducted on September 13, 2021

79

1 Q Did you take any notes during the meeting?

2 A I did not.

3 Q And who started the meeting?

4 A Mr. Welch.

5 Q And do you recall what he said?

6 A Yep, he, basically, said, "Well, Dave,
7 thanks for coming in." And then he pushed the --
8 a stack of papers, which had the email, and he
9 gave it to Dave across the table and, basically,
10 asked if he had written this email. Dave looked
11 at it and said, "Yes."

12 Q Okay. What happened next?

13 A Mr. Welch asked him a bunch of questions
14 about it, basically, "Well, who did you send it
15 to?" He said he sent it to school committee
16 members and friends in town.

17 Q Okay.

18 A Mr. Welch, basically, asked, "Why would
19 you do that? Like, why did you send it to
20 friends?" He goes, "Oh, I wanted them to know
21 what was going on," excuse me, "with my kids and
22 what was going on at the schools."

Transcript of Stephen Traister
Conducted on September 13, 2021

80

1 Q Okay. What -- what happened next?

2 A So, they -- I didn't say a thing during
3 the meeting. They just kept going back and forth
4 and, basically, went through the email a little
5 bit. After they got to the why's and who they
6 sent -- who it was sent to, they disagreed on a
7 lot of things. And Mr. Welch, then, I think --
8 either it was attached to that packet or had
9 another piece of paper that had the school's
10 mission statement, the public schools' mission
11 statement, and then he gave that and asked him
12 that -- you know, did Dave know what this was.
13 And he said, "Yep." And he -- and Dave,
14 basically, said, "I don't agree with it."

15 And then they went back and forth, you
16 know, just asking questions -- I -- Dave didn't
17 ask questions, I don't think. Mr. Welch just kept
18 asking questions, well, about the email and then
19 about, you know, the content of the email, about
20 equity and the contents of the school mission
21 statement.

22 Q Do you recall specifically what about

Transcript of Stephen Traister
Conducted on September 13, 2021

100

1 like some other ones. It was definitely different
2 playing in the freezing cold at the beginning of
3 the year. We went one in three. We only got four
4 games in because of the COVID problem with another
5 school we were supposed to play, a COVID problem
6 with us, and then a rescheduling problem with
7 COVID on both ends. It was not a --

8 Q Is the --

9 A -- to play games.

10 Q Sure. Is the -- was the new coach a
11 teacher within the school district?

12 A He was not.

13 Q Okay. Were there any new policies or
14 changes implemented relating to the coach as a
15 result of what happened, the Coach Flynn
16 situation?

17 A I -- no.

18 Q Had Coach Flynn not written that one email
19 that I had just shown you previously, would he
20 have been the coach for the Fall II season?

21 A If that email didn't come out and I wasn't
22 aware of anything else, I would assume, yes.